

Merwin Hatchery

Water Right
POD and POU



Legend

- ★ Merwin Hatchery POD
- Merwin Hatchery Intake/Return
- Merwin Hatchery Pipeline
- Merwin Hatchery POU



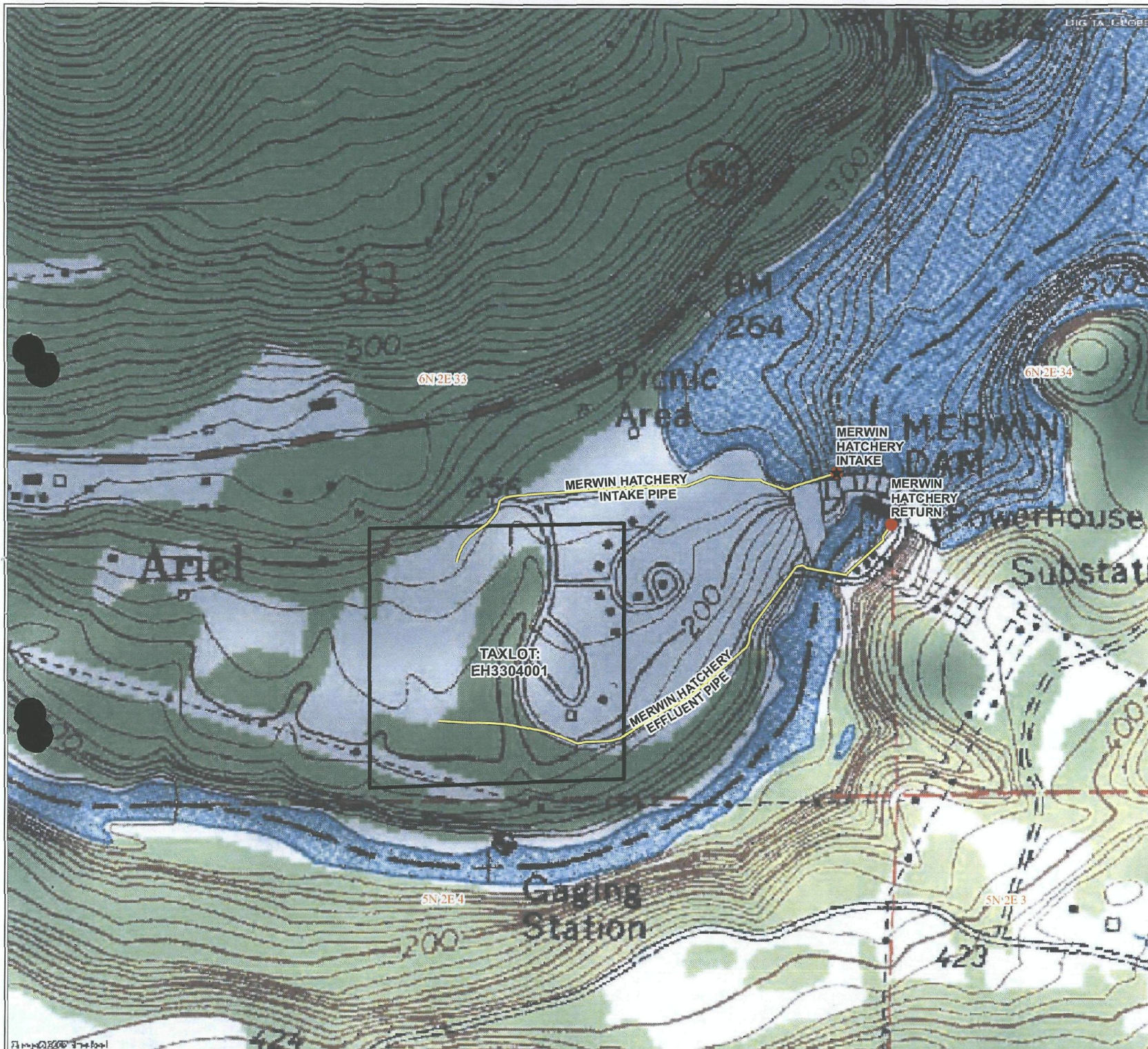
0 500 1,000 Feet

PACIFICORP ENERGY

Geographic Information System

Data is projected in UTM Zone 10, NAD83, meter

PacificCorp GIS collects data from a variety of government and private sources. PacificCorp makes no warranty as to the accuracy, or completeness of this data for individual or aggregate use with other data. For validation, the source of the data should be contacted or source of data should be verified.



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WACZ 2010
WACZ 2009



State of Washington
Department of Fish and Wildlife

Mailing Address: 600 Capitol Way N • Olympia WA 98501-1091 • (360) 902-2200, TDD (360) 902-1267
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

May 30, 2007

Mr. Ken Slattery
Water Resources Program Manager
Washington Department of Ecology
300 Desmond Drive
Lacey, WA 98503

Re: Merwin Trout Hatchery Water Right; Lewis River Hydropower Project
(FERC Nos. P-935, P-2071, P-2111)

Dear Mr. Slattery:

The purpose of this letter is to set forth the views of the Washington Department of Fish and Wildlife (WDFW) on PacifiCorp's recent interactions with our agency and the Washington Department of Ecology (Ecology) to clarify water rights issues relating to the operation of the Merwin Trout Hatchery.

The Merwin Trout Hatchery, located on the North Fork of the Lewis River, adjacent to Merwin Dam near Ariel, Washington, was constructed by PacifiCorp to mitigate for losses of resident and anadromous trout resulting from construction and continued operation of the Merwin Project on the North Fork of the Lewis River. WDFW operates the hatchery under master and annual agreements with PacifiCorp. Continued operation of this hatchery is critical to supporting salmon conservation objectives and recreational fishing opportunities in the Lewis River Basin.

PacifiCorp's water right for the Merwin Trout Hatchery allows for an instantaneous diversion of up to 11 cubic feet per second from the Lewis River, and an annual maximum withdrawal of 3,692 acre-feet, for fish propagation. The hatchery's use of this water is non-consumptive in nature, with all water diverted for hatchery uses returning to the Lewis River at the base of Merwin Dam. The continued operation of this facility will result in the exceedence of the 3,692 acre-feet annual maximum on or about June 24, 2007.

WDFW and PacifiCorp have discussed this matter with Ecology staff and have identified several potential options to ensure the Merwin Trout Hatchery continues operating in a manner best suited to protect the public interest. For example, the parties have discussed Ecology's ability to issue a technical clarification eliminating the annual maximum withdrawal limit. If Ecology finds such an approach consistent with law, WDFW supports a technical clarification in view of:

S

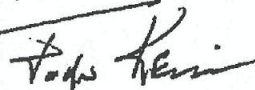
Mr. Ken Slattery
May 30, 2007
Page 2

1) The non-consumptive nature of water use; 2) The overriding public interest in ensuring the safe and efficient operations of the fish hatchery; and 3) The apparent lack of injury to any public or private party as a result of the requested clarification.¹

In the event that Ecology determines that it is unable to issue a technical clarification to the water right, WDFW strongly supports PacifiCorp's application for a new water right and its request for a temporary permit authorizing continued water withdrawals during the processing of the application. As explained above, the proposed elimination of the annual maximum withdrawal will permit WDFW's continued protection and enhancement of fishery resources in the Lewis River basin. WDFW believes the proposed additional, non-consumptive use of water for the Merwin Trout Hatchery will not be detrimental to the public interest, and will in fact protect the public interest by ensuring the continued safe and efficient operation of the Merwin Trout Hatchery.

WDFW respectfully requests that Ecology expedite its consideration of this matter, and confirm with both PacifiCorp and WDFW that PacifiCorp may continue its water withdrawals in the event Ecology is unable to formally resolve this matter by June 24, 2007. Please contact me at kerwijek@dfw.wa.gov or via telephone at (360) 902-2681 if you have any questions regarding this matter.

Sincerely,



John Kerwin
Hatcheries Division Manager

cc: Lew Atkins, WDFW
Jo Wadsworth, WDFW
Patrick Frazier, WDFW
Eric Kinne, WDFW
Todd Olson, PacifiCorp
Erik Lesko, PacifiCorp
Claudia Conder, PacifiCorp
Jeff Marti, Ecology

¹ Notations contained on WDFW's copy of the water right at the hatchery suggest that Ecology may not have intended to impose a volume limitation on the water right.



May 30, 2007

VIA Certified Mail and Electronic Mail

Mr. Tom Loranger
Washington Department of Ecology
300 Desmond Drive
Lacey, WA 98503
Email: tlor461@ecy.wa.gov

Re: Merwin Trout Hatchery Water Right; Lewis River Hydropower Project (FERC Nos. P-935, P-2071, P-2111)

Dear Mr. Loranger:

The purpose of this letter is to follow-up on our recent telephone conversations with your staff regarding operation of the Merwin Trout Hatchery, and to request that Washington Department of Ecology ("Ecology") clarify in writing its views concerning certain water right issues pertaining to the hatchery.

Background of the Issue

PacifiCorp holds a certificated water right to support the Merwin Trout Hatchery, located on the North Fork of the Lewis River, adjacent to Merwin Dam near Ariel, Washington. The hatchery was constructed by PacifiCorp pursuant to a federal license issued by the Federal Energy Regulatory Commission ("the Commission") to mitigate for losses of resident and anadromous trout resulting from construction and operation of the Merwin Project (FERC No. P-935) on the North Fork of the Lewis River. Hatchery operation is required as a condition of the project license. The Washington Department of Fish and Wildlife (WDFW) operates the hatchery under agreements with PacifiCorp. As outlined by WDFW in a recent letter to Ecology, continued operation of this hatchery is critical to supporting salmon conservation objectives and recreational opportunities in the Lewis River Basin.¹

PacifiCorp's current water right for the Merwin Trout Hatchery allows an instantaneous diversion of up to 11 cubic feet per second, and an annual maximum of 3,692 acre-feet, for fish propagation. The use authorized by the Merwin Trout Hatchery certificate is non-consumptive. WDFW recently instituted operational changes at the Merwin Trout Hatchery to enhance the health and survival of hatchery-reared salmonids. WDFW has informed PacifiCorp that these operational changes increase the demands for water, and will result in the exceedence of the 3,692 acre-feet annual maximum on or about June 24, 2007.

¹ Attached letter from John Kerwin, WDFW, to Ken Slattery, Water Resources Program Manager, Washington Department of Ecology (May 30, 2007).



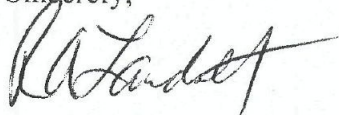
Request for Clarification

On May 17, 2007, PacifiCorp staff and Ecology representatives discussed on the phone the situation outlined above in detail, including PacifiCorp's desire to eliminate the 3,692 acre-feet annual maximum limit to permit continued hatchery operations. During this call, Ecology representatives recommended that PacifiCorp apply for a new water right to increase the water available for the Merwin Trout Hatchery as opposed to pursuing a technical clarification or temporary permit. Ecology representatives also indicated in this call a willingness to confirm in writing that Ecology will not pursue legal actions against PacifiCorp or WDFW for exceeding the 3,692 acre-feet annual maximum during the pendency of an application for a new water right.

Through this letter, PacifiCorp wishes to confirm Ecology's advice on this matter. PacifiCorp also requests that Ecology confirm in writing that the State of Washington will not pursue legal actions against PacifiCorp or WDFW for exceeding the 3,692 acre-feet annual maximum associated with its water right for the Merwin Trout Hatchery during the pendency of an application for a new water right.

Thank you very much for your prompt response to this matter. Please call Todd Olson or Erik Lesko of my staff at (503) 813-5000 if you have any questions about this letter.

Sincerely,



R. A. Landolt
Managing Director, Hydro Resources
PacifiCorp Energy

Attachment: Letter from John Kerwin, WDFW, to Ken Slattery, Water Resources Program Manager, Washington Department of Ecology (May 30, 2007).

cc: Jeff Marti, Ecology (Via Email)
John Kerwin, WDFW (Via Email)



June 20, 2007

VIA OVERNIGHT MAIL

Washington Department of Ecology
Cashiering Section
P.O. Box 5128
Lacey, WA 98509-5128

Re: Application for New, Permanent Surface Water Right; Merwin Trout Hatchery, Lewis River Hydropower Project (FERC Nos. P-935, P-2071, P-2111)

To Whom It May Concern:

Enclosed for your consideration is an application made by PacifiCorp Energy for a new, permanent surface water right ("the Application") to operate the Merwin Trout Hatchery, a fish hatchery located on the North Fork of the Lewis River, adjacent to Merwin Dam near Ariel, Washington. Also enclosed for your consideration are documents in support of the Application, including (1) a map as required in Section 4 of the Application illustrating the points of diversion and return of the water in relation to the Merwin Trout Hatchery; (2) a letter from the Washington Department of Wildlife ("WDFW") dated May 30, 2007, supporting issuance of a new water right; and (3) a copy of a letter dated May 30, 2007, from PacifiCorp, to Tom Loranger, Washington Department of Ecology ("DOE") reflecting PacifiCorp's recent discussions with DOE staff concerning hatchery operations during the pendency of the Application.

The Merwin Trout Hatchery was constructed by PacifiCorp pursuant to a federal hydropower license issued by the Federal Energy Regulatory Commission to mitigate for losses of resident and anadromous trout resulting from construction and operation of the Merwin Hydropower Project. Hatchery operation is required as a condition of the federal project license. WDFW operates the hatchery under agreements with PacifiCorp. As outlined by WDFW in its May 30, 2007, letter, continued operation of this hatchery is critical to supporting salmon conservation objectives and recreational opportunities in the Lewis River Basin.

Request to Maintain Priority Date for Existing Water Right

Water Right Certificate S2-28311, with a priority date of August 5, 1991, was issued to PacifiCorp on May 12, 2000 for an instantaneous diversion of 11 cfs and with a 3,692 acre-feet limit (non consumptive) for fish propagation at the Merwin Trout Hatchery. WDFW has informed PacifiCorp of the need to increase the annual maximum withdrawal volume to provide for changes in hatchery operations and fish health requirements. On the advice of DOE staff, PacifiCorp is now applying for a new, permanent surface water right that will allow for an instantaneous diversion of up to 11 cfs without an annual maximum volume limitation.



In applying for a new water right, PacifiCorp wishes to preserve its 1991 priority date for its existing Merwin Trout Hatchery water right. PacifiCorp requests that DOE issue a new water right authorizing PacifiCorp to withdraw water in excess of the current 3,692 acre-feet limit, while at the same time maintaining PacifiCorp's existing priority date for withdrawals up to 3,692 acre-feet. Doing so will help insure continued operation of the Merwin Trout Hatchery during low flow periods.

Thank you very much for your prompt response to this matter. If you have any questions about the Application or associated documents please call me at (801) 220-2252 or Erik Lesko at (503) 813-6624.

Sincerely,



Claudia Conder
Water Rights Administrator
PacifiCorp Energy

cc: Jeff Marti, Ecology (Via Email)

Enclosures



RECEIPT

PO Box 5128

Lacey, WA 98509-5128

(360) 407-7095

Receipt Number

07-025660

(4610) Manual Receipt

Current Document Number **461K3203CJ**

Date 06/26/2007 FM 24

Remitter Name	PACIFICORP CONDER, CLAUDIA
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Receipt Name

Check/Draw Number	1163
Document Amount	\$50.00
Method of Payment	Check
Comment Description	WATER RIGHTS

[illegible]

Printed By: Ira Peterson

On: 07/24/2007 At: 11:27 am

RECEIPT

Department of Ecology

PO Box 5128

Lacey, WA 98509-5128

(360) 407-7095

Receipt Number

08-001345

(4610) Manual Receipt

Current Document Number **461N0099CJ**

Date **07/25/2007** FM 01

Remitter Name **PACIFICORP
CONDER, CLAUDIA**

Receipt Name

Check/Draw Number **.1167**

Document Amount **\$1,050.00**

Method of Payment **Check**

Comment Description **WATER RIGHTS S2-30414**

Ref Doc Nr	Ref Doc Sfx	Inv Nr	Id Nr	Sub Id Nr	Prgm Cd	T C	R	Fund	Maj Grp	Maj Src	Sub Src	Cnty	Work Cls	PIC	Al	Org	Prj	Sub Prj	Prj Phs	Sub Obj	Sub Obj	Var GL	Sub Sid Dr	Sub Sid Cr	Alloc Amt
					H00	001		001	02	85	000011														\$1,050.00

JUL 24 2007

Detach and return this portion with your payment.

PLEASE SEND CHECK OR MONEY ORDER PAYABLE TO:

(DO NOT SEND CASH)

Department of Ecology
P.O. Box 5128
Lacey, Washington 98509-5128

Amount Due: \$1050.00

Water Right No(s): S2-30414

FROM: Pacificorp
Attn: Claudia Conder
1407 W North Temple #110
Salt Lake City, Utah 84116
(801) 220-2252

Water Resources Program, Southwest Regional Office

FOR ECOLOGY USE ONLY: 001 WR1 0285 000011

Amount rcvd: \$ 1050

Check No.: 1167

WATER RIGHT FEE INVOICE

ECY 070-259